

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6724 of 1998

For Approval and Signature: sd/-

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI LILABHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

MR PUSHPADATT VYAS for MR BS PATEL for Petitioner
MR HASMUKH PATEL, AGP for Respondent Nos.1,2 & 3
MS PARUL PATEL for MR BG JANI for Respondent Nos.4 &
5

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/02/2002

C.A.V. JUDGEMENT

1. The original revision-petitioner Ishwarbhai Lilabhai Desai (alleging himself to be a Chief Promoter of Shri Khodana Gopalak Vividh Karyakari Sahakari Mandli

(proposed) of village Khodana, Tal.Patan, Dist.Patan) in Revision Application No.30 of 1998 submitted by him under Section 155 of the Gujarat Co-operative Societies Act, 1961 (for short as "the Act".) to respondent No.1 has, by filing this Writ Petition under Article 227 of the Constitution of India (though in title Article 226 of the Constitution of India is stated) challenged the order dated 22/6/1998 of the respondent No.1 at Annexure-C, by which the order dated 14/10/1997 of respondent No.3 at Annexure-A and order dated 21/4/1998 passed by respondent No.2 at Annexure-B are confirmed.

2. The facts leading to this writ petition in a nutshell are as follows :-

2.1 The petitioner is a resident of village Khodana, Tal.Patan, District : Patan. He in his capacity as Chief Promoter of Shri Khodana Gopalak Vividh Karyakari Sahakari Mandli (proposed) (for short "the Mandali") of Khodana village submitted an application for registration of the Mandali under the Act to respondent No.3. That application was submitted on 6/11/1995. During the pendency of that application, respondent No.4, which is another Mandali submitted an application dated 22/12/1995 through respondent No.5 to respondent No.3 for registration of respondent No.4. Both the applications were processed by respondent No.3, keeping in mind, the provisions of Section 6 of the Act. In the final result, the application submitted by the petitioner came to be dismissed on 6/1/1996.

2.2 Being aggrieved against and dissatisfied with the said order dated 6/1/1996 of rejection of application, the petitioner preferred an appeal under Section 153 of the Act to respondent No.2. It appears from the record that the present petitioner had preferred an Appeal No.2 of 1996 to respondent No.2 against the rejection of his application for registration of the Mandali, while Appeal No.3 of 1996 was preferred by him for registration granted to respondent No.4. That two appeals were heard and decided by a common order dated 30/3/1996 passed by the respondent No.2. By that order, the aforesaid two appeals preferred by the present petitioner were partly allowed. The registration granted to respondent No.4 granted by respondent No.3 vide Registration No.28302 dated 6/1/1996 came to be cancelled Application dated 6/11/1995 of petitioner and application dated 22/12/1995 of respondent No.4, both were remanded to respondent No.3 with a direction to re-hear both the parties afresh and decide respective applications on merits.

2.3 Thereafter, respondent No.3 processed aforesaid two applications, one of petitioner and another of respondent No.4 afresh. After giving opportunity of being heard to both the parties, the respondent No.2 by his order dated 14/10/1997 upheld the registration granted to the respondent No.4 and simultaneously rejected the application of the present petitioner, which he filed for registration under the Act. That order of respondent No.3 dated 8/14th October,1997 at Annexure-A. Thereafter, the present petitioner filed only one appeal under Section 153 of the Act to respondent No.2. The respondent No.2 after going through the record of the lower authority and after hearing the arguments of learned advocates appeared for the present petitioner and respondent No.4, dismissed Appeal No.138 of 1997, by his order dated 21/4/1998. That order is at Annexure-B. By that order dated 21/4/1998, the registration granted to respondent No.4 vide Annexure-A was restored and confirmed.

2.4 Being aggrieved against and dissatisfied with the aforesaid order dated 21/4/1998 (Annexure-B) of respondent No.2, the present petitioner preferred a Revision Application No.30 of 1998 under Section 155 of the Act to respondent No.1. The respondent No.1, after hearing the learned advocates for both the parties and after perusing the record of lower authorities dismissed that Revision Application, by his order dated 22/6/1998 (annexure-C). By that order dated 22/6/1998, the respondent No.1 confirmed the order dated 8/14th October, 1997 of respondent No.3 and order dated 21/4/1998 of respondent No.2.

3. Being aggrieved against and dissatisfied with the aforesaid order dated 21/6/1998 passed by respondent No.1, in Revision Application No.30 of 1998 the present petitioner has preferred this present writ petition mainly for the following reliefs.

- a. To issue appropriate order or direction quashing and setting aside the aforesaid three orders at Annexure-A dated 8/14th October, 1997 of respondent No.3, Annexure-B dated 21/4/1998 of respondent No.2 and Annexure-C dated 22/6/1998 of respondent No.1.
- b. To direct the respondent No.3 to accept the proposal submitted by the petitioner for registration of the Mandali.

4. At the initial stage, on 16/8/1999, this Court

(Coram : K.R.Vyas,J.) passed an order directing the Office to issue notice returnable on 31/8/1999. Thereafter, on 3/7/2000, this Court (Coram : S.K.Keshote,J.) issued Rule. Thereafter, this matter has been adjourned from time to time till the date of hearing. It appears from the record that neither respondent has filed affidavit-in-reply.

5. I have heard Mr.Pushpadatt Vyas, learned advocate for and on behalf of Mr.B.S.Patel, learned advocate for the petitioner, Ms.Parul Patel, learned advocate for and on behalf of Mr.B.G.Jani, learned advocate for the respondent Nos.4 and 5 and Mr.Hasmukh Patel, learned AGP for the respondent Nos.1, 2 and 3.

6. Mr.Pushpadatt Vyas, learned advocate for the petitioner has argued that the present petitioner in his capacity as Chief Promoter of Shri Khodana Gopalak Vividh Karyakari Sahakari Mandli (proposed) of village Khodana made an application under Section 8 of the Act for getting registration of proposed Mandali and in that application, eleven promoters had put their signatures and it was submitted to the respondent No.3 on 6/11/1995. It is the case of the petitioner that proposed Mandali was eligible in all respects for getting registration under the provisions of the said Act. During the pendency of aforesaid application of the petitioner before respondent No.3, the respondent No.5 in his capacity as Chief Promoter of the proposed Mandali i.e. respondent No.4. The respondent No.5 made such application on 22/12/1995. In his application about 133 promoters had put signatures. Both the applications were processed by the respondent No.3 and ultimately, respondent No.3 passed an order on 6/1/1996, by which application of petitioner was rejected and application of respondent No.5 was granted and registration was granted to respondent No.4. Thereupon, the petitioner preferred two appeals bearing Appeal No.2 of 1996 and Appeal No.3 of 1996 challenging the order dated 6/1/1996 of the respondent No.3 to respondent No.2. The respondent No.2, after hearing of both the parties passed an order dated 30/6/1996 and partially allowed said two appeals preferred by the petitioner. By that order, rejection of application of the petitioner as well as registration granted to the respondent No.4 were set aside and both the applications i.e. one of the petitioner and another of respondent No.4 were remanded back to respondent No.3 to decide afresh.

7. As per the case of the petitioner, the respondent No.3 again processed the said two applications and after

hearing both the parties i.e. petitioner as well as respondent No.5, rejected the applications of the petitioner and confirmed the registration granted to the respondent No.4 vide registration certificate No.28302 dated 6/1/1996. That order dated 8/14th October,1997, which is Annexure-A is also subject matter of this writ petition. Thereafter, the present petitioner preferred an appeal against that order Annexure-A to respondent No.2. It was only one appeal, the order passed in that Appeal No.138 of 1998 is at Annexure-B. It is also a subject matter of this writ petition. Thereafter, the petitioner carried the matter further to the State Government i.e. respondent No.1 by preferring a Revision Application No.30 of 1998 under Section 155 of the Act. The respondent No.1, after making a perusal of the record and after hearing learned advocates for both the parties, rejected the Revision Application No.30 of 1998 preferred by the petitioner on 22/6/1998. The order passed by respondent No.1 is at Annexure-C. It is also subject matter of challenge in this writ petition.

8. Mr.Pushpadatt Vyas has challenged the aforesaid three orders, mainly on the following grounds.

- a. An application submitted by the respondent No.5 was in later point of time because an application of the petitioner was made to respondent No.3 on 6/11/1995, while application of respondent No.5 was presented on 22/12/1995. It is the contention of the petitioner that respondent No.5 with a ulterior motive presented his application with a view to see that registration may not be granted to the petitioner.
- b. The respondent No.3 has grossly erred in rejecting his application on the ground that the petitioner and one of the promoter Lilabhai Jaksibhai, who is the father of petitioner are residing together in one house. Mr.Pusshpadatt Vyas has argued that the respondent No.3 erred in placing reliance on ration card.
- c. The respondent No.3 has grossly erred in placing reliance on the fact that one of the promoter Naranbhai Ratnabhai Rabari, who had taken a loan to purchase a tractor from the Bank of India cannot be said to be a defaulter.
- d. The respondent No.3 has considered the application of respondent No.5, with partiality which was filed subsequently as recommendation

was made by leaders of Village, Taluka and District.

e. While granting the application of respondent No.5, the respondent No.3 did not take into account the fact that one of the promoter Shri Taljabhai Mashroobhai Rabari is a defaulter as he is debtor for Rs.6,500/-- and, therefore, he was disqualified to be a promoter to sign an application for registration.

f. An application of the petitioner was rejected by the respondent No.3 with mala fides and respondent No.3 has by showing undue favour to respondent No.5 granted a registration to respondent No.4.

9. In view of this Mr.Pusshpadatt Vyas submitted that this writ petition should be allowed and order of three authorities below should be quashed and set aside and respondent No.3 be directed to grant a registration to the petitioner by cancelling the registration granted to the respondent No.4.

10. Mr.Hasmukh Patel, learned AGP for the respondent Nos.1, 2 and 3 and Ms.Parul Patel, learned advocate for and on behalf of Mr.B.G.Jani, learned advocate for the respondent Nos.4 and 5 have vehemently argued that looking to the ambit and scope of this Court in dealing with the writ petition under Section 227 of the Constitution of India, this writ petition is not sustainable because the petitioner has advanced his case as if, this writ petition is an appeal or revision against the final result of an order dated 22/6/1998 passed by the Revisional Authority i.e. respondent No.1. They have contended that all three authorities below have given concurrent and consistent findings both on facts and law and, therefore, this Court should be very slow to disturb the findings arrived at by said three authorities and, therefore, this writ petition is liable to be dismissed.

11. It is true that the petitioner has stated Article 226 of the Constitution of India in cause title of this writ petition, but during the course of arguments, Mr.Pushpadatt Vyas has fairly conceded that this writ petition is filed under Article 227 of the Constitution of India. The High Court may quash the order or decision of an inferior tribunal on the following grounds :-

a. That the impugned order or decision is without

jurisdiction, or against the principles of natural justice, or involves non-exercise of jurisdiction, or a grave dereliction of duty or flagrant violation of the law as distinguished from a merely erroneous decision of fact or law, or patent irregularity in procedure or an error of law apparent on the face of the record, or that the finding is 'perverse', being founded on no material whatever.

b. That the exercise of the jurisdiction under Art.227 does not amount to exercising the power of appeal or revision on question of fact or of law, not affecting jurisdiction.

12. Herein this writ petition, it is not the case of the petitioner that either of three authorities below passed the orders without jurisdiction. It is not the case of the petitioner that the principle of natural justice are violated. The only contention is taken by Mr.Pushpadatt Vyas that whatever finding arrived at by the first authority i.e. respondent No.3 is based on erroneous appreciation of evidence on the record. As per the arguments of Mr.Pushpadatt Vyas, though one of the promoter Lilabhai Jaksibhai is a father of the petitioner, his application ought not to have been rejected on placing reliance of ration card. The respondent No.3 has discussed the evidence with regard to eight promoters in his order (Annexure-A). Out of eleven promoters, one is petitioner, second is his son and third is a father.

13. Mr.Hasmukh Patel, learned AGP for respondent Nos.1, 2 and 3 has drawn attention of this Court to explanation below Section 6 of the Act. As per sub-section 1 of Section 6 of the Act, there should be at least ten promoters for constituting a Mandali and those ten promoters should be a members of different families. As per explanation of Section 6 "member of family" means a wife, husband, father, mother, grandfather, son, daughter etc. When out of eleven promoters, three were the persons of the same family, then the respondent No.1 has rightly rejected the application of the petitioner because number of promoters was reduced from 11 to 8. Minimum number of promoters ought to be 10.

14. Mr.Pushpadatt Vyas has then argued that the respondent No.3 ought to have rejected the application of respondent No.5 because admittedly one of the promoters Taljabhai Mashroobhai Rabari was a defaulter. There is no express provision in the Act to show as to

under what circumstances, the promoter can be said to be disqualified for putting signature on the application for registration. Mr.Pushpadatt Vyas is unable to show any provision in the Act or Rules to show that if a promoter is a debtor to any Bank or Mandali, then he is a defaulter and defaulter is disqualified for representing himself to be a promoter of the society. When Mr.Pusshpadatt Vyas has failed to satisfy this Court about the disqualification of promoter, he has argued that certain guidelines are issued by the Government, but he has not produced such guidelines with this writ petition. Looking to the contentions taken by Mr.Pushpadatt Vyas, he has argued as if this is an appeal and he is expecting that this Court should again re-appreciate the evidence. The respondent No.3 has specifically observed in his order (Annexure-A) that about seven dates were granted to the petitioner to produce evidence for his case against the case of the respondent No.5 but petitioner has not led any evidence. The respondent No.3 has discussed all the evidence in his order at Annexure-A. He has appreciated that evidence in correct perspective and ultimately he exercised his powers of rejecting the application of the petitioner and granting registration to respondent No.4. The Appellate Authority i.e. respondent No.2 has again perused the record, appreciated the evidence and after hearing the arguments, and then he has dismissed the appeal preferred by the petitioner. The Revisional Authority i.e. respondent No.1 has also appreciated the evidence again and after hearing the arguments of both the parties rejected the writ petition.

This Court is of the view that all the three authorities below have not exceeded their respective jurisdictions. They gave ample opportunity to the petitioner. Merely because finding arrived at on the basis of the fact is not suitable to the petitioner, it cannot be said that the decision is perverse. The decision can be said to be "perverse" if finding is based on "no evidence". Herein this case all three authorities below have discussed and appreciated the evidence, which was led by both the parties before them and then they have formed their opinion for arriving at a particular decision. Under the circumstances, this Court cannot enter into arena of appreciation evidence again.

15. In the case of Gopala Ganu Wagale v/s. Nageshwardeo Patas Abhishekh Anusthan Trust, Patas, reported in AIR 1978 S.C. 347, it has been held in para-3 at page-348 as follows.

"3. The limits of the High Court's jurisdiction under Art.227 of the Constitution are too well established to require any elaborate restatement. The High Court, in the exercise of its powers under Art.227, cannot function as a Court of appeal and is generally bound by the findings of fact recorded by the tribunal below. But bearing in mind these limitations, we are unable to accept the contention pressed upon us by Mr.Ganpule, appearing on behalf of the appellant, that the High Court has exceeded its powers in interfering with the judgment of the Revenue Tribunal."

16. In the case of Mohd. Yunus v/s. Mohd. Mustaqim and others, reported in AIR 1984 S.C. 38, it has been held in para-7 at page-40 as follows :-

"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record much less an error of law."

17. In a recent decision, in the case of Ouseph Mathai and Others v/s. M.Abdul Khadir, reported in (2002) 1 Supreme Court Cases 319, it has been held in para-5 as follows :-

"5. In Waryam Singh v. Amarnath this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora v. Commr. of Hills Divisions & Appeals. In Babhutmal Raichand Oswal v. Laxmibai R. Tarte this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal."

18. In view of the aforesaid legal position with regard to writ petition under Article 227 of the Constitution of India, now this Court cannot sit in appeal against three orders of three authorities below

and substitute his own findings by reversing the aforesaid three orders. If it is to be done then this court has to appreciate the evidence again which is prohibited by the law.

19. It is interesting to note that the Revisional Authority in his order dated 22/6/1998 observed that on perusal of the documents and submissions made by the parties, promoters of the Mandali of petitioner had given their consent to become members in the Mandali of respondent No.5. Thus, the same persons cannot give consent to both the Mandalis. In view of this, respondent No.3 has rightly rejected the application of petitioner and granted registration to respondent No.4. The said order has been upheld by the Appellate Authority as well as Revisional Authority. Under the circumstances, this Writ Petition is devoid of merits. It deserves to be dismissed.

20. In view of the discussion made hereinabove, this petition is accordingly dismissed. No order as to costs. Rule is discharged.

sd/-

(H.H.Mehta,J.)

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